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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. ~~855~~ 48

PACIFIC STATES BOX AND BASKET COMPANY,
Appellant,

vs.

MAX GEHLHAR, AS DIRECTOR OF AGRICULTURE FOR THE STATE OF OREGON, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

REPLY TO STATEMENT OPPOSING JURISDICTION.

BYRON C. HANNA,
ARTHUR A. GOLDSMITH,
Counsel for Appellant.

INDEX.

Subject Index.

	Page
Appellant's reply to appellees' statement of matters making against the jurisdiction of this court on appeal	1

Table of Cases Cited.

American Smelting & Refining Co. v. Colorado, 204 U. S. 103, 51 L. Ed. 393	4
Chicago, Milwaukee & St. Paul Railway Co. v. Harmon, 89 Mont. 1, 295 Pac. 762	3
Hamilton v. Regents of the University of California, 79 L. Ed. (Adv. Op.) 159	2
Hanover Fire Insurance Company v. Carr, 272 U. S. 494, 71 L. Ed. 372 47 Sup. Ct. Rep 179	4
Kentucky Finance Corp. v. Paramount Auto Exch. Corp., 262 U. S. 544, 67 L. Ed. 1112, 43 Sup. Ct. Rep. 636	3
Louis K. Liggett Company v. Baldridge, 278 U. S. 105, 73 L. Ed. 204, 49 Sup. Ct. Rep. 57	3
Looney v. Crane Co., 245 U. S. 178, 62 L. Ed. 230, 38 Sup. Ct. Rep. 85	4
Metropolitan Casualty Insurance Co. v. Brownell, 79 L. Ed. (Adv. Op.) 564 (decided March 18, 1935)	4
Power Mfg. Co. v. Saunders, 274 U. S. 490, 71 L. Ed. 1165, 47 Sup. Ct. Rep. 678	3, 4
Pullman Co. v. Kansas, 216 U. S. 56, 54 L. Ed. 378, 30 Sup. Ct. Rep. 232	4
Savage v. Jones, 225 U. S. 501, 56 L. Ed. 1182	4
Seaboard Air Line Railway Company v. Railway Commission of Alabama, 155 Fed. 792	3
Sioux Remedy Co. v. Cope, 235 U. S. 197, 59 L. Ed. 193, 35 Sup. Ct. Rep. 57	4
Southern Railway Company v. Greene, 215 U. S. 400, 54 L. Ed. 536	4
Terrell v. Burke Construction Co., 257 U. S. 529, 66 L. Ed. 352, 21 A. L. R. 186, 42 Sup. Ct. Rep. 188	4
Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 54 L. Ed. 355, 30 Sup. Ct. Rep. 190	5

Statutes Cited.

Constitution of the United States, 14th Amendment	3, 4

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 955

PACIFIC STATES BOX AND BASKET COMPANY,
A CALIFORNIA CORPORATION,

Appellant,

vs.

MAX GEHLHAR, AS DIRECTOR OF AGRICULTURE FOR THE STATE OF OREGON, AND CHAS. A. COLE, AS CHIEF OF THE DIVISION OF PLANT INDUSTRY OF THE DEPARTMENT OF AGRICULTURE FOR THE STATE OF OREGON.

APPELLANT'S REPLY TO APPELLEES' STATEMENT OF MATTERS MAKING AGAINST THE JURISDICTION OF THIS COURT ON APPEAL.

Appellant herewith replies to appellees' statement of matters making against the jurisdiction of this Court on appeal. The principal contention of appellees is as follows:

> "Appellees contend that this appeal does not present a case involving a substantial Federal question, for the reason that appellant, a foreign corporation, not licensed to do business in the State of Oregon, has no constitutional right to compel the State of Oregon to desist from prohibiting its citizens from using containers which do not conform to standards adopted by this State as a matter of public policy."

Appellees' sole contention is that the case does not involve a substantial Federal question. The test of what is a substantial Federal question was set forth by this Court in the recent case of *Hamilton* v. *The Regents of the University of California*, 79 L. Ed., Ad. Op., page 159 at 165, as follows:

> "And the appellees insist that this appeal should be dismissed for want of a substantial Federal question. That contention cannot be sustained for we are unable to say that every question that appellant has brought here for decision is so clearly not debatable and utterly lacking in merit as to require dismissal for want of substance."

Although appellees make the assertion that appellant is not licensed to do business in the State of Oregon, there is nothing in the record to warrant such statement. Appellees evidently brought in this issue at this point in order to try to sustain their particular point. There is nothing in the record showing that appellant is not legally engaged in doing business in the State of Oregon. Paragraph VII of the Amended Complaint, which must be taken as admitted on the motion of defendants to dismiss, alleges:

> "That for the past nine years plaintiff has sold strawberry and raspberry baskets and cups of its own manufacture, and as described above, to dealers in the State of Oregon in large quantities."

This case does not involve the terms or conditions upon which a foreign corporation may do business within a State. It does involve the question whether certain orders, promulgated under the alleged authority of certain statutes, are arbitrary, unreasonable and capricious and deprive plaintiff of its property without due process of law. It does involve the question of whether the particular or-

ders deny to plaintiff the equal protection of the laws by declaring as legal only the products manufactured by a certain group, and illegal products manufactured by plaintiff and others. It does involve the question whether such legislation is contrary to the commerce clause of the Constitution. These points go to the merits of this appeal and will be covered fully by briefs and oral argument in due course.

In objecting to the jurisdiction of this Court to hear this appeal, it is appellees' contention that a foreign corporation is disqualified from raising these points. It is submitted that such objection is without merit.

A foreign corporation is a "person" within the meaning of the due process and equal protection clauses of the 14th Amendment, and a foreign corporation which is permitted to do business in a State may not be subjected to State statutes in conflict with the Federal Constitution.

Louis K. Liggett Company v. *Baldrige*, 278 U. S. 105, 111, 73 L. Ed. 204, 208, 49 Sup. Ct. Rep. 57.

Kentucky Finance Corp. v. *Paramount Auto Exch. Corp.*, 262 U. S. 544, 550, 67 L. Ed. 1112, 1115, 43 Sup. Ct. Rep. 636.

Power Mfg. Co. v. *Saunders*, 274 U. S. 490, 493, 496, 497, 71 L. Ed. 1165, 1167, 1169, 47 Sup. Ct. Rep. 678.

A foreign corporation is within the scope of the protection afforded by the guaranty of due process of law in respect to its property.

Louis K. Liggett Company v. *Baldrige, supra.*

Kentucky Finance Corp. v. *Paramount Auto Exch. Corp., supra.*

Seaboard Air Line Railway Company v. *Railway Commission of Alabama*, 155 Fed. 792.

Chicago, Milwaukee & St. Paul Railway Co. v. *Harmon*, 89 Mont. 1, 295 Pac. 762.

A State may not exact, as a condition of a corporation engaging in business within its limits, that its rights secured to it by the Constitution of the United States may be infringed.

Hanover Fire Insurance Company v. *Carr*, 272 U. S. 494, 507, 71 L. Ed. 372, 379, 47 Sup. Ct. Rep. 179.

Metropolitan Casualty Insurance Co. v. *Brownell*, 79 Ad. Op. of L. Ed. 564, 566, decided March 18, 1935.

Power Manufacturing Co. v. *Saunders*, 274 U. S. 490, 494, 71 L. Ed. 1165, 1168, 47 Sup. Ct. Rep. 678.

Pullman Co. v. *Kansas*, 216 U. S. 56, 63, 54 L. Ed. 378, 384, 30 Sup. Ct. Rep. 232.

Terrall v. *Burke Construction Co.*, 257 U. S. 529, 66 L. Ed. 352, 21 A. L. R. 186, 42 Sup. Ct. Rep. 188.

Southern Railway Company v. *Greene*, 216 U. S. 400, 54 L. Ed. 536.

American Smelting & Refining Co. v. *Colorado*, 204 U. S. 103, 51 L. Ed. 393.

Appellant, a foreign corporation, is in a position to object that the orders and legislation involved in this case are void because they interfere with and impose unlawful burdens on the interstate commerce of plaintiff. If such orders are sustained, plaintiff as a practical matter will be unable to ship berry boxes from the State of California into the State of Oregon for sale and California berries cannot be shipped into the State of Oregon if packed in tin-top boxes and sold, without violating the orders and legislation challenged in this case.

Savage v. *Jones*, 225 U. S. 501, 524, 525, 56 L. Ed. 1182, 1191.

Sioux Remedy Co. v. *Cope*, 235 U. S. 197, 203, 59 L. Ed. 193, 197, 35 Sup. Ct. Rep. 57.

Looney v. *Crane Co.*, 245 U. S. 178, 188, 62 L. Ed. 230, 235, 38 Sup. Ct. Rep. 85.

Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 54 L. Ed. 355, 30 Sup. Ct. Rep. 190.

It is submitted that this Court has jurisdiction on appeal to review the interlocutory order and final decree heretofore made by the statutory court of three Federal judges.

Respectfully,

BYRON C. HANNA,
ARTHUR A. GOLDSMITH,
Counsel for Appellant.

(6378-C)